

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 404.

Office Supreme Court U. S.
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JAMES H. MCKENNEY,
Clerk.

ANNA VALENTINA, APPELLANT,

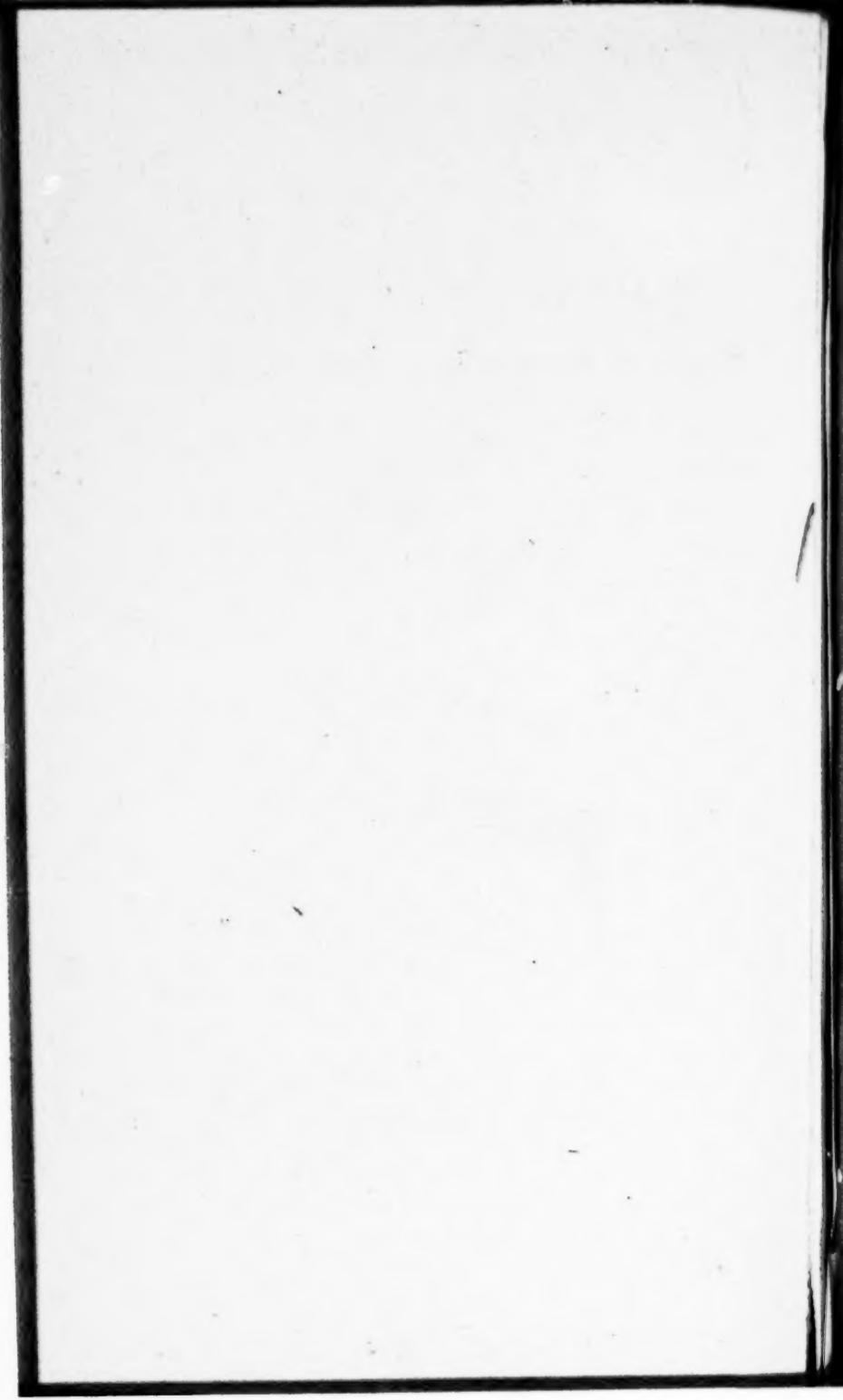
vs.

JAMES W. MERCER, SHERIFF, &c.

MOTION TO ADVANCE.

ROBERT H. McCARTER,
Attorney General of the State of New Jersey,
for the Appellee.

(19,906.)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 404.

ANNA VALENTINA, APPELLANT,

vs.

JAMES W. MERCER, SHERIFF, &c., APPELLEE.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

Statement and Reasons for Advancement of Cause.

The appellant, Anna Valentina, was convicted in the State of New Jersey, in the Bergen county court of oyer and terminer in that State, on the fourteenth day of April, A. D. nineteen hundred and four, of murder in the first degree, and was duly sentenced on the sixteenth day of April, A. D. nineteen hundred and four, to be hanged on Thursday, the nineteenth day of May, A. D. nineteen hundred and four. The appellant being an indigent person and unable to employ counsel, counsel was assigned by the court to defend her. The counsel so assigned had been admitted to practice in the courts of said State for twenty-seven years, and holds the office of a special master in chancery, an examiner in chancery, and a supreme court

commissioner. No action was taken by the counsel so appointed to review the judgment entered against the appellant, but an application was made by him to the court of pardons of New Jersey for a commutation of sentence. On such application a full transcript of the record of the trial was presented to that court, and after having duly considered the same the application was denied. No further action in the cause was taken by the counsel appointed by the court, but upon the announcement of the decision of the court of pardons the present counsel for the appellant obtained a writ of error, and carried the case to the court of errors and appeals of New Jersey, being the court of last resort of said State. The cause was duly argued at the November term, nineteen hundred and four, of said court, and on the sixth day of March, nineteen hundred and five, the conviction of the appellant was affirmed. The appellant was thereupon resentenced on the fourth day of April, nineteen hundred and five, to be executed on the twentieth day of May, nineteen hundred and five.

A second application was then made to the court of pardons of said State for a commutation of sentence. On the fourth day of May, nineteen hundred and five, that court again denied the application, and a death warrant was duly issued directing the sheriff of the county of Bergen to proceed with the execution of the sentence on the twelfth day of May, nineteen hundred and five.

On the ninth day of May, nineteen hundred and five, or three days prior to the date fixed for execution, the present counsel of the appellant made application to the Honorable William M. Lanning, judge of the United States district court for the district of New Jersey, for a writ of *habeas corpus*, alleging as a ground for the interference of the Federal courts the following reasons:

1. The said appellant was deprived of her liberty without due process of law, in violation of the fourteenth amendment of the Federal Constitution.

2. That she did not understand the English language.
3. That her statements to the court were made through an interpreter, and that the court assigned to her counsel with whom she could not communicate except through an interpreter.
4. That her admission that she killed the deceased was misinterpreted and distorted into an offer of a plea of guilty of murder.
5. That her counsel stated to the jury in opening the case for the defense that the said appellant when arraigned in open court made confession of the commission of the crime, and that the verdict would be simply to determine what the degree of her guilt should be. That this statement had no foundation in the evidence.

The judge of the district court denied the application for said writ of *habeas corpus* upon the ground that from the petition it appeared that the petitioner was not entitled thereto.

From the determination of the district judge an appeal was taken to this court.

The grounds upon which the application to the district court were based were the same, or substantially the same, which had been previously passed upon by the court of errors and appeals of New Jersey, the alleged ground of Federal interference being that the appellant had not received a fair and impartial trial in accordance with the laws of this State, and that therefore, being a citizen of Italy, she had not received the protection guaranteed to her as a citizen of that country by the treaties existing between the Kingdom of Italy and the United States of America.

The only question for determination in this cause therefore is the single question whether the said appellant did in

fact receive a trial of the character guaranteed to citizens of Italy by the treaties existing between the Kingdom of Italy and the United States of America.

It is respectfully urged that this cause should be advanced for argument upon the following

REASONS.

1. That the validity of the trial in accordance with the laws of the State of New Jersey has been directly passed upon and decided adversely to the appellant by the highest court of review of that State.
2. That the execution of the sentence in the Bergen oyer and terminer has been delayed from the nineteenth day of May, nineteen hundred and four.
3. That the appeal in this cause directly attacks the administration of justice in said State of New Jersey and attempts to bring into discredit the administration of justice through the courts of said State.
4. That the cause has attracted large notoriety, and on account of the nature of the appeal tends to discredit the courts of the said State of New Jersey in the due administration of the criminal laws of said State.
5. That the case being a capital case, the interests of justice require a speedy determination.

All of which is respectfully submitted.

ROBERT H. McCURTER,
Attorney General of the State of New Jersey.

SUPREME COURT OF THE UNITED STATES.

ANNA VALENTINA, *Appellant,*
vs.
 JAMES W. MERCER, *Sheriff, &c., Appellee.*

ON APPEAL FROM ORDER REFUSING WRIT OF HABEAS
 CORPUS.

Affidavit.

STATE OF NEW JERSEY, } ss :
 County of Bergen,

Ernest Koester, being duly sworn according to law, on his oath deposes and says: I am the prosecutor of the pleas in and for the county of Bergen and held this position at the thirteenth day of April, nineteen hundred and four, at the time of the trial of the appellant, Anna Valentina, and have held that office continuously until the present time. I appeared on behalf of the State at the trial of the said Anna Valentina, who was tried for murder in the Bergen county court of oyer and terminer on the thirteenth and fourteenth of April, A. D. nineteen hundred and four. The said Anna Valentina was found guilty by the jury of the crime of murder in the first degree on the fourteenth day of April, nineteen hundred and four; and on the sixteenth day of April, in the same year, was duly sentenced to be hanged on Thursday, the nineteenth day of May, nineteen hundred and four.

The attorney who was appointed by the court to defend the said Anna Valentina was Mr. Milton M. Demarest, a practicing lawyer in this State in good standing, who was admitted to practice in the supreme court of this State as an attorney at the June term, eighteen hundred and seventy-seven, and three years later admitted by the same court to practice as a counselor. Mr. Demarest has been appointed a special

master in chancery, is an examiner in chancery, and holds the position of a supreme court commissioner.

No writ of error was taken by Mr. Demarest from the judgment of the court, but an application was made on her behalf to the court of pardons of New Jersey. An application having been made to the governor, a stay was granted pending the determination by the court of pardons of her case. Mr. Demarest presented her case before the court of pardons with a full transcript of the record of the trial. The application for pardon or commutation was duly considered by the court of pardons and denied. Upon the decision of the court of pardons being announced, Mr. James M. Trimble, an attorney and counselor at law of this State, then appeared in behalf of the appellant, Anna Valentina, and made an application to the governor for a further stay, to permit him to take a writ of error, bringing before the court of errors and appeals of the State of New Jersey for review the conviction of the said Anna Valentina. The stay applied for was duly granted, and on the twentieth day of June, nineteen hundred and four, a writ of error was issued out of the court of errors and appeals, bringing before it for review the conviction of the said appellant.

The case was argued at the next ensuing term of the court of errors and appeals, to wit, the November term, nineteen hundred and four, and a decision was rendered by that court on the sixth day of March, nineteen hundred and five, affirming the conviction of the appellant. The appellant was thereupon resentenced upon the fourth day of April, nineteen hundred and five, to be executed on the twelfth day of May, nineteen hundred and five.

The case was again submitted to the court of pardons for its consideration. That court, on the fourth day of May, nineteen hundred and five, again refused the application for pardon or commutation, and a death warrant was issued directing the sheriff of the county of Bergen to proceed with the execution of the sentence on the twelfth day of May,

nineteen hundred and five. On the ninth day of May, nineteen hundred and five, Mr. Trimble made application to the Honorable William M. Lanning, judge of the United States district court for the district of New Jersey, for a writ of *habeas corpus*, alleging as grounds for the interference of the Federal courts the same, or substantially the same, grounds which he had raised in his appeal to the court of errors and appeals of this State, namely, that the question of the appellant's guilt or innocence had not been passed on by the jury, but that the only question submitted to said jury was the degree of murder of which she was guilty ; that the appellant's counsel, Mr. Demarest, had failed to properly present to the jury the question of the appellant's guilt or innocence, and that he had failed to present to the jury the question as to the appellant's mental capacity ; that the trial judge in instructing the jury had failed to properly instruct the jury that it might find the appellant innocent, but had confined the deliberations of the jury to the determination as to whether the appellant was guilty of murder in the first or second degree. All of these questions were duly argued before the court of errors and appeals of the State and were decided by it adversely to the appellant.

The alleged ground of Federal interference was set forth in a petition that the appellant, being a citizen of Italy, had not received a trial of the character guaranteed to citizens of that country by the treaties existing between the kingdom of Italy and the United States of America.

No other Federal question was interposed, and, as I have said, the validity of the trial was upheld by the court of errors and appeals of this State in passing directly on that question, the court holding that a fair and impartial trial had been accorded to the appellant in accordance with the laws of this State and that she was legally convicted.

Deponent further says that, in the opinion of deponent, the application for a writ of *habeas corpus* is solely interposed for the purpose of preventing the due execution of the law-

ful sentence of the courts of this State; that the appellant has been accorded full protection in accordance with the laws of this State, and that the expenses of her defense in the trial court and the presentation of her case before the court of pardons and the necessary printing to present her case have been paid for by the State without expense to her.

Deponent further says that owing to the notoriety and publicity which have been given to this case, and owing to the attempt which has been made to convince the public that the appellant has not received a fair trial, and has not been protected in her legal rights, it is highly important that the case should receive speedy action at the hands of the Supreme Court of the United States, to which appeal has been taken, that the record of the case should be reviewed, and that an authoritative decision upon the points involved should be speedily given; that any delay in the disposition of this case will permit continued reflection to be brought against the administration of justice in the State of New Jersey, and will bring into disrepute the administration of the criminal law in this State.

ERNEST KOESTER.

Subscribed and sworn to before me this twenty-first day of September, nineteen hundred and five.

THEODORE BACKES,
Master in Chancery of New Jersey.

SUPREME COURT OF THE UNITED STATES.

ANNA VALENTINA, *Appellant,*
vs.
JAMES W. MERCER, *Sheriff, Etc., Appellee.*

ON APPEAL.

Notice of Motion to Advance.

To JAMES M. TRIMBLE, *Attorney for Said Anna Valentina,
Appellant, and the said Anna Valentina, Appellant:*

Take notice that I shall move before the Supreme Court of the United States, at the court-room of said court, in the city of Washington, D. C., on Monday, the fifteenth day of January next, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, to advance the above-entitled cause for argument, and that upon such motion I shall present to the court in support thereof the statement, reasons, and affidavit hereto annexed.

Respectfully, ROBERT H. McCURTER,
Attorney General of the State of New Jersey.

Dated December 27, 1905.

SUPREME COURT OF THE UNITED STATES.

ANNA VALANTINA, *Appellant,*
vs.
 JAMES W. MERCER, *Sheriff, &c., Appellee.*

ON APPEAL.

**Proof of Service of Notice of Motion to Advance,
Statement, Reasons, and Affidavit.**

STATE OF NEW JERSEY, }
County of Mercer, } ^{ss:}

Hervey S. Moore, of full age, being duly sworn, according to law, on his oath, says that he resides at Trenton, New Jersey, and that on Thursday, the twenty-eighth day of December, nineteen hundred and five, he served personally upon Anna Valantina, above named, the annexed notice of motion, statement, reasons, and affidavit, by delivering a true copy of the same to said Anna Valantina at the common jail of the county of Bergen, New Jersey, at Hackensack in said county, and at the same time making known to her the contents thereof. And deponent further says that on the same date above mentioned, to wit, the twenty-eighth day of December, nineteen hundred and five, at the city of Newark, county of Essex and State of New Jersey, he served personally upon James M. Trimble, Esquire, the attorney of said Anna Valantina, the annexed notice of motion, statement, reasons, and affidavit, by delivering a true copy of the same to said James M. Trimble, and at the same time making known to him the contents thereof.

HERVEY S. MOORE.

Subscribed and sworn to this twenty-ninth day of December, nineteen hundred and five, at Trenton, Mercer county,

New Jersey, before me, a notary public of the State of New Jersey, duly commissioned and sworn, as witness my hand and notarial seal.

[Seal Owen W. Kite, Notary Public, New Jersey.]

OWEN W. KITE,

Notary Public of the State of New Jersey.

[Endorsed:] File No. 19,906. Supreme Court U. S. October term, 1905. Term No. 404. Anna Valentina, appellant, *vs.* James W. Mercer, sheriff, &c. Motion to advance, with notice and proof of service. Filed Dec. 30, 1905.